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SUMMARY RECORD OF THE 1487th MEETING

Held at Headquarters, New York,
on Tuesday, 26 March 1996, at 3 p.m.

Chairman: Mr. BÁN
(Vice-Chairman)

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In the absence of Mr. Aguilar, Mr. Bán, Vice-Chairman, took the Chair.

The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Second periodic report of Zambia (CCPR/C/63/Add.3; HRI/CORE/1/Add.22/Rev.1)

1. At the invitation of the Chairman, Mr. Kasanda, Mrs. Chigaga and Ms. Kazhingu (Zambia) took places at the Committee table.

2. Mr. KASANDA (Zambia), introducing the second periodic report of Zambia, said that his country had undergone tremendous changes since the presentation of its previous report. A multi-party system of government had been reintroduced and general elections held. The new ruling party, the Movement for Multi-Party Democracy (MMD), was committed to promoting democratic principles of regular, free and fair elections, transparency and accountability and was determined to protect fundamental human rights and freedoms and to consolidate the rule of law in Zambia.

3. Pursuant to that commitment, the President of the Republic had appointed a commission to review the Constitution of Zambia. The commission's terms of reference were to collect the views of the public on the type of constitution Zambia should enact; recommend a system of government that would promote the democratic principles of regular and fair elections, transparency and accountability; recommend appropriate arrangements for the protection of human rights, the rule of law and good governance; recommend provisions to ensure the competence, impartiality and independence of the judiciary; examine the composition and functions of the organs of State with a view to ensuring their independence and maximizing their checks and balances; recommend a suitable system for a smooth transfer of power following an election; recommend the relationship that should exist between the party in power and opposition parties; take account of previous national and foreign constitutions as well as the views submitted to the MUNYAMA Commission; recommend modalities for the adoption and amendment of the constitution for grass-roots participation in the political process; examine ways of strengthening the system of parliamentary and multi-party democracy; and promote broad public debate on the constitutional proposals for a democratic Zambia.

4. Fully aware that the protection of fundamental human rights and freedoms required the existence of an independent judiciary, the Government had instituted wide-ranging measures, including the retraining of police officers, judges and magistrates, in order to reinforce the independence of the judiciary.

5. On the economic front, major reforms had been undertaken in the financial, social, health and education sectors aimed at assisting the economic recovery of the country.

6. As a result of the major changes which had taken place, the current report was self-contained and was not an update of the first report.

Constitutional and legal framework within which the Covenant is implemented, non-discrimination and equality of the sexes, protection of the family, state of emergency, right to take part in the conduct of public affairs, and rights of persons belonging to minorities (articles 2, 3, 4, 23, 26 and 27 of the Covenant) (section I of the list of issues)

7. The CHAIRMAN read out section I of the list of issues concerning the second periodic report of Zambia, namely: (a) information on cases where provisions of the Covenant had been given judicial notice, on the status of the Zambian Bill of Rights in domestic law, on how contradictions between domestic legislation and the Covenant were resolved, and on whether consideration had been given to incorporating the Covenant into domestic law; (b) clarification of the extent to which the provisions of the Covenant had been taken into account in the formulation of the new Constitution; (c) clarification of the procedures for the implementation of any views adopted by the Committee under the Optional Protocol; (d) information on the respective functions and activities of the Commission for Investigation, the Investigator-General and the MUNYAMA Human Rights Commission as well as the relationship of those bodies with each other and with other State organs; (e) description of the steps taken to disseminate information, in the various languages spoken in Zambia, on the rights recognized in the Covenant and in the Optional Protocol and to inform the Zambian public of the Human Rights Committee's consideration of the current report; (f) clarification of why none of the states of emergency referred to in paragraph 14 of the report (CCPR/C/63/Add.3) had been notified to the Secretary-General; (g) clarification of the safeguards and effective remedies available to individuals during a state of emergency; (h) information on the measures taken to ensure the effective enjoyment by minorities of their rights under article 27 of the Covenant; (i) information on the measures taken to eliminate the remaining areas of discrimination against women and to bring Zambian legislation into full conformity with the provisions of the Covenant.

8. Mr. KASANDA, responding to section I (a) of the list of issues, said that the Zambian Bill of Rights was enshrined in part III of the Constitution and its status as the supreme law of the land was therefore unassailable. There were no contradictions between the Bill of Rights and the Covenant. Indeed the Bill of Rights guaranteed many of the fundamental rights and freedoms enshrined in the Covenant and in other international and regional human rights instruments.

9. With regard to the issue raised in section I (b), the national debate on the provisions of the new constitution was already far advanced. Care would be taken during the technical drafting stage to ensure compatibility with international human rights instruments. The only exceptions would be cases where the national interest was at stake.

10. With regard to the procedure followed for the implementation of the Committee's Views (section I (c)), he pointed out that the Views were first transmitted to the Minister of Legal Affairs, who made his recommendations to the Cabinet, after which the Government formulated its response.

11. The function of the Commission for Investigation (section I (d)), which had been established pursuant to article 90 of the Constitution and the Commission for Investigations Act, chapter 183 of the laws of Zambia, was to review complaints of maladministration on the part of government agencies and, where appropriate, to make recommendations thereon to the Government. The MUNYAMA Human Rights Commission had been established in 1993 to investigate cases of torture alleged to have taken place during 1973 and any current cases and to report thereon to the Government. While there was no direct relationship between the two Commissions, particularly since the MUNYAMA Commission's mandate had expired following the submission of its report, there was some similarity in their functions in that they both reviewed the conduct of government agencies and served as advisory bodies.

12. With regard to section I (e) of the list of issues, regrettably, the Covenant had not been translated into the seven major languages of Zambia, owing to the lack of resources and competing priorities. It should be noted, however, that the non-governmental organizations present in Zambia had played a helpful role in that regard.

13. On the subject of the states of emergency which had been declared in Zambia (section I (f)), it must be recalled that a state of emergency had existed in Zambia from the time of its independence until after the 1991 multi-party elections. That state of emergency had been instituted by the colonial administration to suppress the national independence movement. It had been retained by the young State to suppress criminal violence and rebellion, maintain public order and the system of justice and generally to ensure the protection of the State, especially in view of the unilateral declaration of independence by the then Southern Rhodesia. The Committee was no doubt aware of the role played by Zambia in the struggle for the liberation of other southern African States. The reimposition of a state of emergency in March 1993 was a response to an internal plot to promote civil disobedience. The state of emergency had been declared by the President with the support of the national parliament and had remained in force for only three months. It was because of the particular circumstances of those states of emergency that the Secretary-General of the United Nations had not been notified.

14. Referring to the remedies available to individuals during a state of emergency (section I (g)), he said that the right to file a writ of habeas corpus and to legal representation was still guaranteed by law during such periods and it was for the courts to determine whether the detention of particular individuals was justified. The safeguards enshrined in article 27 of the Constitution were intended to prevent abuse by the State under articles 25 and 26, which provided for derogations from fundamental rights and freedoms during states of emergency and time of war.

15. On the subject of protection of the rights of minorities (section 1 (h)), he noted that all persons, including minorities, were equal before the law in Zambia. Moreover, a constitutional amendment enacted in 1990 expressly prohibited discrimination based on sex. While national legislation in that field was in conformity with the provisions of the Covenant, regrettably, de facto discrimination still existed as a result of long-standing cultural practices and traditions which discriminated against women. Women were denied

full and equal access to economic resources, including credit, ownership of land and inheritance rights. Their participation in all aspects of the nation's social and economic life was limited and they were denied equal access to educational and health services. Zambia was aware that the long-term solution lay in providing equal access to education for girls to enable them to develop their full potential and in educating the society as a whole so as to bring about a change in attitudes towards women, who in the past were trained only to become good wives and mothers.

16. Mr. LALLAH recognized Zambia's leading role in the fight for self-determination for its neighbours and stated that paragraph 2 of the report was indicative of Zambia's commitment to bring its legislation into conformity with the Covenant and the Optional Protocol and to implement the Committee's views.

17. He wondered, however, if there might not be some inconsistencies between the Covenant and the Constitution, particularly, in protecting against all forms of discrimination. He was glad that the delegation recognized that sexual discrimination was still a problem but felt that it was a problem not only of customary or traditional law but also of the existence of various derogations allowed by the Constitution in articles such as 23, paragraphs 4 (c) and (d) which adversely affected equality of women in the areas of divorce, adoption and inheritance. The effect of customary law on the status of women should be studied and the white paper under preparation should provide a forum for discussing how not only practice and tradition, but also the law, affected the status of women. It was not enough simply to pass laws, equality truly had to be enshrined within those laws.

18. He also requested additional information on part II of the Constitution, which appeared to impose unreasonable restrictions on the citizenship qualifications of presidential candidates in violation of article 25 of the Covenant.

19. Mr. KRETZMER, while applauding the positive achievements in Zambia, wondered to what degree the principles enshrined in the law were applied in practice. Non-governmental organizations seemed to be very active in Zambia and had provided many reports, especially on the status of women. Their unequal status often seemed to be the result not only of a disparity between the law and practice but also of the exploitation of the law by the authorities in order to reinforce inequalities. Mr. Lallah had raised concerns about article 23, paragraphs 4 (c) and (d) of the Constitution and the report by the Organization of Women in Law and Development in Africa cited the statement of a local court that custom and tradition allowed a man to beat his wife if she misbehaved. That would be a case not only of de facto discrimination but of discrimination that was legitimized by the legal system. A distinction was also made in the case of adultery: a woman who petitioned a court for divorce because her husband was guilty of adultery was denied a divorce, while the divorce was granted to a man who petitioned a court because he suspected his wife of adultery. Zambia should also take steps to outlaw discrimination against women in the areas of employment, housing, access to credit and other areas mentioned in the report.

20. He expressed concern about the independence of the judiciary, since there had been worrying reports that in March 1996 two journalists from the Post newspaper had been tried and condemned by parliament to indefinite detention, raising the question of the relative judicial powers of the judiciary and the supreme political body of the nation.

21. Mr. BHAGWATI wondered if article 23, paragraph 3 of the Constitution defining discrimination as different treatment to different persons, might affect affirmative action programmes in favour of women, since such programmes were permissible under article 26 of the Covenant. He also wondered why paragraph 4 (b) of the same article excluded non-citizens, whereas the Covenant in article 26 referred to "all persons".

22. He also had concerns about article 27, paragraph 4 of the Constitution concerning the Tribunal to be created by the Chief Justice to decide whether legal aid would be granted for an appeal to the High Court requesting enforcement of the fundamental rights set out in the Constitution. It seemed to him that the process would almost require that the applicant receive legal aid first in order to be able to pay for the proceedings to request legal aid for his case before the High Court. In addition, he did not see any provisions for legal aid in general.

23. Like Mr. Kretzmer, he had grave concerns about the indefinite detention imposed on two journalists from the Post for criticizing a statement made in parliament by the Vice-President attacking a judicial decision in a case involving the Public Gathering Act. He would like to see the provision of the National Assembly Powers and Privileges Act defining the speaker's powers in cases of contempt of parliament. Did he have the same powers as that in the British Parliament, were there limits? Did he truly have the authority to deprive two Zambian citizens of their liberty for an indefinite period subject to an apology? Article 25 of the Constitution went far beyond what was provided for in article 4 of the Covenant concerning derogations from human rights in case of a public emergency, and that article should be amended to conform to the Covenant.

24. The report referred to a human rights commission. What were its statute and its mandate, had it conducted any inquiries, had any sanctions been applied? The report also referred to constitutional reforms. Once such reforms were proposed, did the authorities follow up on the suggestions? Could the Government arbitrarily reject such proposals without consulting parliament or calling a constituent assembly? According to Organization 19, a proposal concerning freedom of the press had been rejected by the Government since it was already included in the Constitution. Referring to a report from Amnesty International, he wondered if it was an accurate description to say that the prisons were severely overcrowded, that sanitation, food and water were grossly inadequate and had led to outbreaks of dysentery and other diseases and that the prisoners were deprived of basics such as soap and clothing. If true, what steps had been taken to remedy the situation?

25. A report from the Zambian Association for Research and Development on the status of women, said that after the most recent election, no women had been appointed to the cabinet, a worse record than that of the previous Government.

In a cabinet shuffle six months after the election, two women were named to the cabinet but only in minor positions. Discrimination against women was a serious problem and the Constitution, in article 23, actually exempted the most common forms of discrimination namely, those arising out of customary, family or personal law, in effect, protecting and actually legalizing discrimination. The Intestate Succession Act also treated the widow very unfairly. What steps were being taken to put an end to that legalized discrimination? Finally, the report gave little information on article 24 of the Covenant, specifically child labour; was there a problem, if so how great, and what steps were being taken to eliminate it?

26. Mr. MAVROMMATIS expressed satisfaction with the degree of progress made in Zambia since the inception of multi-party democracy, which the Committee found very encouraging. Concerning discrimination on the basis of gender, he wondered why Zambia, which had ratified international human rights instruments, had not simply taken the provisions of the Covenant (which reflected the principles of the Universal Declaration of Human Rights) or other international or regional human rights instruments, and included them in an amendment to the Constitution?

27. The Committee had received a great deal of information on the status of women from local non-governmental organizations, which seemed very active in Zambia. Their activity was rather unusual for a developing country and was an encouraging sign. While he appreciated the delegation's candid replies, greater efforts had to be made to eliminate prejudice inherent in customary and tribal law which bred continued violations of the rights of women. Since Zambia had accepted the Optional Protocol, and ratified the Covenant, the Committee's jurisprudence held that the provisions of the Covenant superseded all tribal or customary law and simply invoking the Covenant would be one quick way of eliminating such anomalies in the law as differential treatment of men and women in cases of adultery.

28. Zambia generally had an excellent record in responding to concerns expressed by the Committee. Only two cases had been pending and one had been resolved, one declared inadmissible. One of those cases, however, involved the death penalty for aggravated robbery involving the use of firearms. Thus, the death penalty was applicable in cases other than murder or treason and that point should be brought up when the delegation discussed article 6 of the Covenant.

29. He expressed some confusion at the process whereby the Government decided to comply with a decision of the Committee. It had been stated that after the Ministry of Justice had taken a decision, the case was handed over to the Council of Ministers, and afterwards a commission decided on compliance. However, the Committee wanted assurances that there was some systematic way of ensuring compliance. In the absence of enabling legislation, were the decisions of the Committee directly applicable? Concluding his remarks, he noted that although the report said that there was no penalty of imprisonment for debt, like most common law countries there was imprisonment for failing to make payments such as support payments, ordered by a court. Imprisonment in such cases was in violation of the Covenant and other countries had found more satisfactory solutions to that problem.

30. Mr. EL-SHAFEI said that although the rights enshrined in the Covenant were said to be covered by the Constitution and laws of Zambia, the State party was under obligation to review the compatibility of its domestic laws with the Covenant at the time of ratification. He asked whether such a review had taken place. For example, paragraph 13 of the report mentioned several derogations from rights that contravened article 4 of the Covenant in case of a public emergency. The discrepancies between customary law and statutory law were also of concern, since international obligations should take precedence.

31. Ms. MEDINA QUIROGA also requested clarification concerning the declaration of a public emergency addressed in articles 30 and 31 of the Constitution. She could not understand why there should be derogations from such rights as freedom of conscience, protection from discrimination and protection of young persons from exploitation.

32. With regard to the situation of women, she inquired what such sectors of the Zambian Government as the parliament and the higher courts were doing to address de facto discrimination. Since abortion was a crime in Zambia, she wondered what types of family planning services were available and whether any studies had been done on the effect of illegal abortion on the maternal mortality rate. She inquired about protection for unmarried women who became pregnant. For example, would a pregnant teenager be forced to leave school? Since according to the core document, only a small number of women were in the labour force, she would welcome information on affirmative action programmes for women.

33. Mr. FRANCIS said that, under treaty law, a party to an international instrument could not invoke internal law to evade an international obligation. He therefore inquired about the prospects for harmonization of the Constitution with the Covenant.

34. On the subject of gender rights, publications from non-governmental organizations reported that women were discriminated against through administrative policy and lack of police response to violence against them. One such study of gender bias reported that all the petitions for divorce initiated by women invoking adultery as grounds had been rejected on the pretext that under customary law, which allowed polygamy, a man could not commit adultery. He asked for further comment on that situation.

35. Ms. EVATT asked for more specific information about the Sarah Longwe case, mentioned in paragraph 9 of the report where an unaccompanied woman had been refused entry to a hotel dining room. Such cases pointed to a great need for general anti-discrimination laws, and she wondered whether such laws were being contemplated. In her view, the Government position regarding the force of customary law helped to perpetuate outdated attitudes towards gender. In the recent constitutional review, women had argued for more effective anti-discrimination measures, which had, in fact, been recommended by the constitutional review commission. Its recommendations had not been reflected in the new Constitution, however, indicating failure to provide adequate representation of women in the political process.

36. Mr. KASANDA (Zambia) said that Zambia had subscribed to the Optional Protocol with the intention of carrying out its obligations thereunder in due course. It freely acknowledged problems in certain areas, but its policies were governed by transparency and accountability.

37. With regard to discrimination against women, the Government acknowledged the problem of customary law versus statutory law. Marriages contracted under statutory law were fully covered by the protections in the Covenant, but customary law was more permissive and accorded more rights to men. The situation was changing but the process was slow. Unfortunately, a girl who became pregnant would be expelled from school on disciplinary grounds, but the boy involved would receive the same punishment.

38. Mrs. CHIGAGA (Zambia) said that Zambian law gave women a choice: they could contract marriage under the Marriage Act or under customary law. Under the Marriage Act, divorce would be granted only upon proof of irretrievable marital breakdown, which included adultery of either party. The cases mentioned earlier were unions entered into under customary law, which allowed polygamy. In such cases, the Government could do little. The problem was far-reaching and involved politics, the economy, the power structure and education. An educated woman with a certain degree of economic independence was unlikely to contract a marriage under customary law. In reality, however, most Zambian women were not aware of their rights or were not in a position to refuse such a marriage.

39. The Government could enforce laws only with the agreement of its citizens. For example, no statute prohibited the granting of credit to women, but 90 per cent of bank managers were men; prevailing attitudes inhibited them from doing so. The Government was stressing change through education and had instituted a policy of positive discrimination in favour of girls for access to secondary school and university. The active non-governmental organization community was also working to raise awareness and change attitudes.

40. Zambian law protected women from violence; assault on a spouse was a criminal offence. Domestic violence was quite a complex problem, however. If a wife was beaten by her husband and had her injuries medically certified, she could press charges. In the vast majority of cases, however, women declined to prosecute their husbands, usually because they were economically dependent on them.

41. Mr. KASANDA (Zambia), in reply to a question about the Sara Longwe case, said that there was no law prohibiting unaccompanied women from entering hotels, but that there were administrative rules established by hotel management aimed at preventing prostitution.

42. The two journalists who had been detained indefinitely on charges of contempt of parliament were being held under provisions meant to prevent journalists from discussing certain matters which were still being debated on the floor by the members. Lawyers representing the journalists had protested their detention and the courts had not yet decided the case.

43. While the question of citizenship in Zambia was covered in article 5 of part II of the Constitution, new legislation had been introduced to require that

in order to be eligible for the presidency, a person had to be third generation Zambian. The legislation in question had not yet been enacted and was still under debate.

44. Turning to the question of the participation of women in political life, he said that, in the past, women had been given token positions in the Government rather than posts based on their qualifications. The attitude of the Government now in office was that women had to have degrees in order to hold public office. There were currently two women in Government in the area of science and technology and energy. He stressed that change was slow to come and that it would take several years for women to compensate for their general lack of education. For many years women were taught to be subservient to their husbands and in many poor families it was the girls who left school to help their mothers.

45. In reply to an inquiry as to whether the Government had taken any steps to implement recommendations emanating from the Human Rights Commission, he said that the Government had not yet fully complied with those recommendations. On the other hand, the Government was committed to the provisions of the Covenant and was determined to incorporate standards of international law into its domestic legislation. The challenge was to ensure that those standards became part of domestic behaviour. There had actually been two cases where the Government had paid compensation in compliance with the views of the Committee. Finally, he said that there was a law in Zambia providing for imprisonment for debt, but that it was not applied in practice.

46. Mrs. CHIGAGA (Zambia) said that her Government felt sincerely obliged to review the statutes when it ratified an international instrument such as the Covenant. However, law review was an ongoing and long process. Since 1991, there had been a massive law reform programme which would yield results over the next five years when many new laws would be passed.

47. While she conceded that article 25 of the Constitution concerning the state of emergency was a derogation of article 4 of the Covenant, she stressed that the state of emergency was only invoked as a last resort to prevent serious danger to society. Furthermore, there were very stringent conditions for invoking a state of emergency.

48. Turning to the question of women and abortion, she said that women had free access to family planning facilities and that contraceptives were provided free of cost. Public opinion in Zambia was against abortion and unwed mothers were not stigmatized in society. The mortality rate of women resulting from legal abortions was not a very serious problem in her country.

49. Lord COLVILLE asked for clarification with regard to the case of the two journalists who had been detained on charges of contempt of the National Assembly, and specifically whether it would be possible for the representatives of Zambia to produce the text of the National Assembly (Powers and Privileges) Act under which the journalists had been detained.

50. Mr. KRETZMER asked whether there was any legislation in Zambia outlawing discrimination in the private sector, for example in the area of employment or housing.

51. Mr. KLEIN said that article 25 of the Constitution presented two very specific inconsistencies with the Covenant as regarded freedom of conscience and the prohibition of discrimination. The Covenant strictly prohibited derogation from those rights and he asked how the Government proposed to deal with those inconsistencies.

52. Ms. EVATT said that information from United Nations sources had suggested that illegal abortions in Zambia accounted for 1 out of 10 of all maternity admissions and had a fatality rate of 4 in 1,000. She sought confirmation of those figures because they indicated that illegal abortion constituted a serious problem.

The meeting rose at 6 p.m.